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FOSTER, J EXAMINER

ART UNIT	PAPER NUMBER
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3208

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DATE MAILED: 05/19/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire 53 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6. _____

Part II SUMMARY OF ACTION

1. Claims 1-9 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1-3 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application serial no. _____ filed on _____. AT 11/18/94.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other *Claims 4-9 are improper multiple dependent and not further handled on the merits.*

EXAMINER'S ACTION

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1. Claims 4-9 are objected to under 37 C.F.R. § 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See M.P.E.P. § 608.01(n). Accordingly, these claims have not been further treated on the merits.

2. Claims 1-3 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 2, the limitation, "box-like body" is considered to be indefinite because it is unclear what various structural forms would be considered to be box-like.

In claim 1, line 3, the limitation, "can be opened at the top" is considered to be functional and indefinite because there is insufficient structure recited in the claim to perform the function of the limitation.

In claim 2, the limitation, "have a polygonal plan shape" is considered to be an indefinite double recitation of the limitation, "has a polygonal plan" in lines 2-3 of claim 1.

In claim 3, it is not clear what is referred to in line 2 by the term "it".

3. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

4. Claims 1 and 2 are rejected under 35 U.S.C. § 103 as being unpatentable over Kawasaki et al (4,869,367) in view of Tinsley (2,579,131). Although Kawasaki et al does not disclose that the container 1 is polygonal, it has been held that a change in aesthetic (ornamental) design generally will not support patentability. In re Seid, 73 USPQ 431. Therefore, it would have been an obvious design choice to have made the container 1 of Kawasaki et al in the manner as taught by Tinsley, with a polygonal shape for ornamental purposes. Furthermore, it would have been obvious from the shape of the retaining member 4 of Kawasaki et al being in a shape which conforms to the inside wall of the container 1 to modify the shape of the retaining member 4 of Kawasaki et al such that it conforms to the cross section of the polygonal shape.

To further have provided a top on the container of Kawasaki et al for the purpose of prohibiting the wire from being removed would have been obvious in view of Tinsley at top wall 1.

5. Claims 1 and 2 are rejected under 35 U.S.C. § 103 as being unpatentable over Applicant's admission of the prior art on page 1 of the specification, lines 3-16 in view of Tinsley (2,579,131). Applicant discloses a cylindrical wire container, having a hood and having freely descending movable lid. Applicant does not disclose that the container is polygonal.

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However, it has been held that a change in aesthetic (ornamental) design generally will not support patentability. In re Seid, 73 USPQ 431. Accordingly, it would have been an obvious design choice to have made the container, which admitted by Applicant, in the manner as taught by Tinsley, with a polygonal shape for ornamental purposes. Furthermore, it would have been obvious from the disc shape of the admitted container, which therefore conforms to the inside wall of the container, to have modified the shape of the movable lid such that it conforms to the cross section of the polygonal shape.

6. Claim 3 is rejected under 35 U.S.C. § 103 as being unpatentable over the references (paragraph 4 or 5) as applied to claim 1 or 2 above , and further in view of Zecchin (3,491,876). Although the container admitted by Applicant or the container of Kawasaki et al does not have handles and the reference of Tinsley does not teach handles, it would have been obvious in view of Zecchin at customary cutouts 17 to have provided handle holes in the side walls of the admitted container or the container of Kawasaki et al, for the purpose of carrying the container from one location to another.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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May 11, 1995

Jimmy G. Foster
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PRIMARY EXAMINER
ART UNIT 244
5/11/95 3208